

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

3 IN RE: : Case No. 05-10053-HB
4 DANIEL MAURICE FOWLER and : Chapter 13
MARSHA DEAN W. FOWLER,
5 : Columbia, South Carolina
Debtors : Thursday, July 31, 2008
6 : 11:24 a.m.
7 :
8 DANIEL MAURICE FOWLER and : AP 08-80037
MARSHA DEAN W. FOWLER,
9 :
Plaintiffs, :
10 :
v. :
11 :
FIRST FEDERAL SAVINGS AND :
LOAN, :
12 :
Defendant. :
13 :
14 TRANSCRIPT OF HEARING ON MOTION TO DISMISS
15 ADVERSARY PROCEEDINGS FILED BY DEFENDANT
16 BEFORE THE HONORABLE HELEN E. BURRIS,
UNITED STATES BANKRUPTCY JUDGE
17 APPEARANCES:
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1 APPEARANCES (Continued) :

2 For Defendant:

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1 P R O C E E D I N G S

2 THE COURT: No. 13, 08-80037, Fowler versus First
3 Federal Savings and Loan, motion to dismiss adversary
4 proceeding.

5 Are you following me to Spartanburg today?

6 MR. JONES: Yes, Your Honor. I think I'm gonna have
7 to race you over to Spartanburg.

8 THE COURT: If the parties will state your
9 appearances, please.

10 MR. JONES: Ron Jones, Your Honor, on behalf of First
11 Federal. I'm sorry.

12 MR. CANTRELL: John Cantrell for the debtors.

13 THE COURT: Okay. We got a complaint and an answer
14 and a motion to dismiss, and I noted in the pleadings that --
15 well, essentially, I'll tell you I read them and my feeling is
16 that you can try, but I don't think you're gonna get very far
17 on the, the information was already out there elsewhere.
18 Because I think, you know, you see on TV that guy that rides
19 the van around town with the Social Security number on the van.
20 Still, that's his choice, not somebody else's. So I'm not sure
21 about that.

22 I do know that when I saw this adversary I knew --
23 obviously, I signed an order redacting the information -- that
24 my, my next thought was are there damages and that's, you know,
25 the point you've raised that I think is a good point and in

1 countering that you've asked that we be limited to the
2 pleadings. There has -- it is a 12(b) (6), I believe, and so I,
3 I'm not so sure. I think most of the things that were outside
4 the pleadings that you wanted to get in were about the thing
5 I've already told you I'm skeptical about.

6 But as far as whether there are damages or not and
7 whether at this point the case should be dismissed, that's what
8 I'm interested in, I believe. You can tell me whatever you
9 want but that's the thing that I'm focused on, is I, I'm not
10 sure that he could prove damages at this point in time, but I'm
11 also not sure that he can't ultimately prove them and I'm
12 unclear on whether or not -- certainly, I think the Court can
13 enter an order to deter the conduct in the future and he may be
14 entitled to discovery to see if this is an isolated incident or
15 if it's a larger problem, which would affect that.

16 So anyway, it's an interesting point. I'll let you go
17 ahead, now that I've ruined your argument for you by jumping
18 ahead.

19 MR. JONES: That's all right, Your Honor. I've been
20 doing this long enough to know that that is more likely the
21 case than not, oftentimes.

22 THE COURT: Well, at least I've read what you wrote.

23 MR. JONES: And I appreciate that, Your Honor, and I
24 will not waste a lot of the Court's time on it.

25 You know, I, the gist of my argument is not to bring

1 in something outside the pleadings, but to address a number of
2 matters that are raised in the complaint, which I think are
3 certainly within the Court's power to dismiss and also to talk
4 about what actual claims are, are and should be before the
5 Court.

6 In order to do that, I have to give, I feel like, a
7 little bit of a factual background that comes maybe not solely
8 from the pleading filed, but certainly from the record in this
9 case, which is all relevant because it arises out of a Chapter
10 13 bankruptcy case.

11 The case was filed as a Chapter 13 in September, on
12 September 5, 2005. First Federal filed a proof of claim within
13 the filing deadline. I did not find that this morning, but I
14 was scrambling around looking for that date. But it was --
15 consistent with that procedure, it would have been fairly
16 quickly after the filing of the case and certainly before the
17 filing deadline.

18 It was filed on the official form and it attached
19 copies of the original documents that evidenced the claim,
20 including a mortgage recorded in Horry County with the book and
21 page for each page and below the signature line the handwritten
22 Social Security numbers of the debtors.

23 THE COURT: And that was at a time when, even though
24 it was 2005, the redaction --

25 MR. JONES: Actually, it was --

1 THE COURT: -- policy was still in effect?

2 MR. JONES: -- 1992 when that mortgage --

3 THE COURT: Right.

4 MR. JONES: -- was filed. So that was some 16 years
5 ago.

6 THE COURT: I'm sorry. I misunderstand you.

7 MR. JONES: Yeah.

8 THE COURT: You filed -- when you filed the proof of
9 claim in the bankruptcy and attached those documents the E-
10 Government Act and everything was in effect at that point, I
11 believe.

12 MR. JONES: It was in effect, is that what --

13 THE COURT: Okay.

14 MR. JONES: I believe it was in effect.

15 THE COURT: I believe it was, but when you filed it in
16 the state court was not.

17 MR. JONES: It was not. That was the point --

18 THE COURT: And may not even apply to things -- and I
19 have no idea --

20 MR. JONES: Yeah.

21 THE COURT: -- in the state court -- but we don't --

22 MR. JONES: Right.

23 THE COURT: -- regardless.

24 MR. JONES: And I, I'm not sure what those rules are
25 in that regard, but it's -- the attaching of those documents,

1 of course, are required, you know, under the Rule: Evidence of
2 the debt with the POC and showing evidence of your security
3 interest. And it's the routine practice that we take an actual
4 copy of the original that's on, in our file.

5 To our knowledge, you know, this is still in the
6 public record in Horry County. It was as of, you know, this
7 controversy arising and mindful of what you started with, I
8 can't agree more. It doesn't forgive the fact that it's there,
9 that it's not allowed under the current Rules and E-Guidelines
10 and things.

11 Interestingly, there was no attempt to redact at that
12 point because, apparently, nobody knew that it was even there.
13 It certainly wasn't brought to anybody's attention, but back in
14 2005 this set there until the filing of the motion for relief
15 from stay.

16 And at this point I need to back off just a minute,
17 Your Honor -- and I'm gonna use the word "we" a lot, but it's
18 not the royal "we" that you hear a lot. It's the "we" that
19 this is me. I did this, too. It's not just First Federal.
20 I'm the one that filed the motion for relief from stay. I'm
21 the one that overlooked the fact that there were Social
22 Security numbers on the mortgage that was attached to it.

23 So when I say "we," I really do mean First Federal and
24 Ron Jones. If anybody is responsible for this inadvertent
25 error, I'm just as responsible as anybody else.

1 The debtor objected to our motion for relief from
2 stay; at the same time filed a motion for sanctions citing
3 9037; requested production of documents and asked the Court for
4 an expedited order to get those documents before the normal
5 period for having to respond to those things. In fact, a slew
6 of kind of motions. Somewhere around the same time a motion,
7 which I assume is ex parte 'cause I've never seen it other than
8 on the Court's ECF docket, was a motion to deny access to
9 correct and redact that information.

10 Now I understand that that was learned over the
11 weekend and there wasn't an ability to contact us, but I can
12 assure you on my reputation before this Court I would have
13 certainly corrected it as soon as I knew about it and was not
14 aware of it until these motions got filed.

15 The Court then entered an order after we responded to
16 all of those motions setting up a scheduling hearing just sort
17 of old-fashioned we're gonna make this preliminary. We're
18 gonna get down to all of these issues. In the meantime, we
19 resolved the issues in the motion for relief from stay and
20 response and the 9037 motion was withdrawn. And that
21 withdrawal cited the settlement order which included language
22 that First Federal would agree to reimburse the estate for the
23 costs that it was told resulted as, that came about as a result
24 of the mistake, by the inadvertent error. We freely paid that.
25 We paid it right away; agreed to pay it right away. It's in

1 the order.

2 Also in that same order the parties agreed they'd pay
3 their own attorney's fees. No mention of any other kind of
4 damages, or any other causes of action, or anything like that.
5 It was just a flat withdrawal. That's in the Court's record
6 and it was a 9037 motion.

7 The Court is certainly aware of most of these facts
8 because there's been other matters before Your Honor, including
9 a hearing on whether or not Mr. Cantrell ought to get more fees
10 for additional work in this case. Interestingly, we've never
11 been asked to pay any of his fees. In fact, we've agreed that
12 we all pay our own fees.

13 Again, all of that background is alluded to, if not
14 set forth, in the adversary proceeding, itself, and our
15 position here is that this has been decided. This issue, the
16 harm done has been determined through a settlement agreement
17 between the parties. The wrong's been corrected. First, it
18 was admitted to, then it was corrected. Then responsibility
19 was taken for it and an offer to do whatever was necessary to
20 fix it was accepted and nothing's been asked of us other than
21 what we've done. And again, I point out that that "we"
22 includes me.

23 It is a 12(b) (6) motion, Your Honor, and despite the
24 response filed a couple of days ago -- I received it
25 yesterday -- to this motion, which wasn't timely, we did move

1 to dismiss the full complaint, not just some of the actions.

2 Now I will tell you that in some of the specific
3 responses to what we deem to be claims or implied claims we
4 again ask for dismissal, but this is a 12(b) (6) of the whole
5 complaint. I don't object to the late-filed response because I
6 think it's instructive and I think it misses the point.

7 Under the Gramm-Leach-Bliley Act, we've argued that it
8 does not create a private right of action through, for a debtor
9 through a debtor's lawyer in a bankruptcy case or any,
10 otherwise and have been unable to find a case that would
11 indicate that it did.

12 Now Mr. Cantrell in his response indicates, "You know,
13 you're right. These are guidelines." Well, in fact, all of
14 the things that are mentioned in the complaint, save 9037, are
15 guidelines and none of them give rise to a specific cause of
16 action against First Federal.

17 So the issue then becomes, you know, was there a
18 violation of 9037 and then were there damages for that and then
19 has there been a remedy. And that's what I'd like to
20 concentrate on there, Your Honor. And included in that, of
21 course, what violates 9037 is this failure to redact
22 information.

23 We admit, again, that we made this mistake. We did
24 not redact it. I can assure you, Your Honor -- and I'm not
25 aware of any attorney in this District or anywhere else that

1 reviews documents any more closely than I do now for just this
2 sort of thing, but I also don't know anybody who would have
3 ever thought to look at the signature page to see if you might
4 be violating a privacy policy, or disclosing some information.
5 What's on the signature page? Signatures. First Federal
6 certainly doesn't do this now -- and I don't know how long that
7 practice happened -- but as Your Honor pointed out, I don't,
8 I'm not aware that it was ever a violation of the law to do
9 that, nor is it really a violation of the law now, but, rather,
10 a court directive by way of a Rule that indicates you shall not
11 put this information in a pleading, or publish it.

12 Now we settled the 362 and the motion for sanctions
13 and all the pending matters before the Court except this
14 adversary proceeding, but it seems to me that the whole
15 adversary proceeding boils down to the same thing that was
16 brought in the motion for sanctions.

17 In Mr. Cantrell's response to the motion for, to
18 dismiss that's before you today, he indicates that that's what
19 this is about, and I don't disagree that the Court has the
20 right and the authority and the ability to fashion a remedy for
21 a violation of the Rules. And they have that right through 105
22 and I would think that they would have that right whether there
23 was a 105, or not.

24 But it is not a strict liability statute. The closest
25 thing that we have like that in the Bankruptcy Code is the

1 subdivision of 362 that says when you violate the stay there
2 will be, and there are damages, there will be an award.
3 There's no other such strict liability language in 9037, or any
4 other provision of the Code, that I'm aware of. And I searched
5 it looking for an example. The only one that I could find and
6 the closest one I could find is that.

7 It is true that the mistake was made; it is true that
8 we owned up to it; it is true that we reimbursed the estate for
9 what we thought were the costs of doing that; and we were
10 moving forward only then to be having to come here and answer
11 for the same thing, again.

12 The point made in the motion to dismiss and the
13 response that's interesting is that Mr. Cantrell says we made
14 this information ready, readily available on the Worldwide Web.
15 Well, I think we can all take notice of the fact that the
16 Bankruptcy Court website isn't the Worldwide Web. It is a
17 restricted website. It requires a registration, a license, if
18 you will, for its users. The Court does that, itself. We, we
19 didn't make it available to the public any more than it already
20 was. And that's the point of pointing out that this is already
21 in the public record. We didn't do anything that wasn't
22 already in the public record.

23 So we're talking now about a sin of omission, if you
24 will, as opposed to commission. And there's no allegation to
25 the contrary. We just completely didn't redact these numbers.

1 It was wrong. We admitted it. We stepped up to the plate to
2 take responsibility for it and that's what we're doing now.

3 Your Honor, when I first started practicing law -- and
4 you're probably aware of this because you were practicing in
5 the same Districts that I was when we first went down that road
6 -- the Western District of North Carolina sort of had a little
7 reputation among the creditors' bar, anyway, of sort of
8 extorting fees out of unwary or --

9 MR. CANTRELL: Objection. Relevance. Prejudicial.
10 We're not going there, Your Honor.

11 THE COURT: Well, he's just making arguments.

12 MR. CANTRELL: I know --

13 THE COURT: I'm not worried about it.

14 MR. CANTRELL: -- but I know where he's going and I'm
15 gonna object, again, in a moment. I'm just prepping you for
16 that.

17 THE COURT: Well, I'm, I'm gonna allow it.

18 MR. CANTRELL: Okay.

19 THE COURT: There's no jury here.

20 Go ahead.

21 MR. JONES: There was a reputation, at least among the
22 creditors' bar, that there was a little cottage industry where
23 fees and costs could be gotten for inadvertent violations of
24 the stay, which is, again, you know, proper and oftentimes
25 those were blatant and they needed to be punished and the Court

1 needed to enforce those Rules and that was true, but it was
2 almost funny the way all of the letters that sort of led up to
3 the motion for sanctions read exactly the same way, just a
4 different address on them.

5 So it became a sort of a joke among the creditors' bar
6 that, boy, you better not mess up in Charlotte, or you'll be
7 paying somebody's fees for 500 grand, or \$500 or \$600. And,
8 you know, I was involved in a number of those and a number of
9 them got settled out in the hallway by just paying the fees of
10 the plaintiff's lawyer, debtor's lawyer who brought them.

11 It seems to me that that's not the way to enforce the
12 Court's Rules. It seems to me that the way to enforce the
13 Court's Rules is to fashion a remedy that is commensurate with
14 the consequences. In this case, it's gonna be almost
15 impossible, as the Court has already noted, to prove that any
16 identity theft in the future, which there certainly hasn't been
17 any alleged now, was a result of this incident and this mistake
18 as opposed to say it'd already been on the record in Horry
19 County.

20 It seems to me that that's so speculative that the
21 best way to do this is for the Court to enforce its orders
22 through 9037, if it doesn't accept our argument that that's
23 already been resolved, in a, in a way so that there is a
24 deterrent -- because I believe that that's what 9037's there
25 for -- so that there is a public admission -- and I submit to

1 you this is much more public than what was done -- and so that
2 there is an owning-up to the mistake and so that there is, you
3 know, I'm not gonna do this, again, and this is how I did it.

4 First Federal has a policy that's been updated as a
5 result of things, of this and of inadvertent errors and things
6 like that. We're willing to have the Court direct us to
7 publish that policy right here for all the bankruptcy bar to
8 see.

9 We're willing, also, to listen to a, a remedy that is
10 commensurate with what happened, with what actually went on,
11 not some proposed possible problems in the future, but I gotta
12 tell you -- let's, let's think about this for a second -- if I
13 was gonna steal the identity of somebody, I'm not sure it would
14 be a Chapter 13 debtor and I'm not sure that there's a whole
15 lot of people that are on that website -- that includes me,
16 you, everybody in this courtroom that's an attorney -- that has
17 a registration is really gonna do that, or go on there. So the
18 likelihood is very, very small.

19 So it seems to me that if you have somebody before you
20 who is indicating that they made the mistake, owning up to it,
21 telling the Court that they'll do what it takes to fix it, that
22 a long protracted adversary proceeding with discovery and --
23 and that -- that brings -- that causes the estate or the debtor
24 damages by way of attorney's fees and costs isn't the way to do
25 that. The way to do that is to reasonably look at what

1 happened, make the punishment fit the crime.

2 Your Honor, a couple of months ago in the BANKLA
3 monthly meeting Mr. Cantrell showed up with a really funny T-
4 shirt on and it said, "I Am Going to Make a Federal Case Out of
5 It." It's -- that's funny because Bankruptcy Court is federal.
6 I agree. He is gonna make a federal -- it is a federal case.
7 I don't disagree.

8 MR. CANTRELL: Amen.

9 MR. JONES: I don't disagree that it was serious. I
10 don't disagree that it was serious, but this is more akin to
11 making a mountain out of a mole hill and there's absolutely no
12 evidence and no allegation in the complaint thus far -- all
13 taken, it's true -- that would indicate otherwise.

14 And for those reasons, Your Honor, First Federal comes
15 to you contrite, apologetic, ready to do what it takes to fix
16 this problem and resolve it without the necessity of having to
17 pay a lot of attorney's fees and fashioning damages that aren't
18 otherwise there in the, in the person of Mr. Cantrell's fees.

19 So we ask that you consider dismissal on the grounds
20 that I've already stated, the fact that the 9037 was done, but
21 if Your Honor decides to go forward, let's be logical about how
22 we do that. Let's make this remedy, this deterrent, this
23 policy statement to the bar in the way it ought to be made, not
24 through a protracted lawsuit with depositions and damages,
25 trying to prove damages and expense to everybody, but let's

1 just go ahead and fix the problem.

2 Thank you, Your Honor.

3 MR. CANTRELL: May it please the Court, thank you for
4 hearing me today on this motion to dismiss my adversary
5 complaint in this matter.

6 As you can tell from First Federal's arguments, even
7 to the president, they don't really understand what taking
8 responsibility for this means. They don't really understand
9 the seriousness of it, Your Honor.

10 I want to quote from the Fourth Circuit, like I did in
11 my, in my original complaint, Your Honor, and I want you to
12 see, I want you to understand how serious they think this issue
13 is and was back in 1993 when they issued this opinion, an
14 opinion called Greidinger versus Davis. They said:

15 "The harm that can be inflicted from the disclosure of
16 a Social Security number to an unscrupulous individual
17 is alarming and potentially financially ruinous."

18 And, and Mr. Jones says, "Well, you know, we don't see
19 any harm right now. We don't, we don't think that's a
20 problem." That was in 1993. That was before the effective
21 date of Gramm-Leach-Bliley in July 1st of 2001. That was
22 before the E-Government Act of 2002. That was before the
23 Court's adoption of its privacy policy, which, by the way, I
24 believe, has the force of Local Rule, pursuant to Local Rule
25 9029-1.

1 Frankly, Your Honor, First Federal has violated just
2 about every type of law that can be imagined: the Code, the
3 Rules. As he indicated in his motion to dismiss, we've got an
4 action for negligence, which we ask the Court to allow us to
5 amend to add a state law negligence claim.

6 This, this action I brought is not based on
7 negligence. The Court doesn't have to prove even damages. If
8 the Court orders something, if the Rules require something and
9 we don't do it, before the Court can order contempt the Court
10 doesn't say, "Well, has the Court been damaged?" It's not an
11 issue. The Court's integrity's been damaged when the Code and
12 the Rules are violated. The Court can award sanctions either
13 to correct this error in the future, or for having ignored this
14 in the past, especially if there are multiple times when this
15 has been done.

16 And so we do need -- he says "make the punishment fit
17 the crime." We need discovery. We need to see exactly how big
18 a crime First Federal has committed. They're one of the
19 largest lenders in this state. They should have known about
20 these laws the moment they came out, which we're talking 2001
21 and 2002. And I don't know when the Court's privacy policy was
22 placed on its website, but I'm pretty sure that was a result of
23 the E-Government Act of 2002, or shortly thereafter.

24 So it's -- we're talking five, six, seven years that
25 First Federal should have known about this and their attorney

1 should have known about this and if they didn't back in 2005
2 and if they didn't back in 2008, after Congress came along
3 again on December 1, 2007 and added 9037, when will they know?
4 The fact of the matter is, Your Honor, the only reason they
5 know about it is because I'm here before you today.

6 And this is a very serious case, and I assure you that
7 if for any reason this Court weren't to take it seriously that
8 it's obviously being taken extremely seriously at the highest
9 levels in, in this, in this Circuit.

10 So I want to address a few of the things he said.
11 Basically, Your Honor's mostly concerned about damages, and I
12 want to get that out of the way right upfront because that's,
13 obviously, your biggest concern.

14 There are damages in this case. If you look at every
15 one of the three allegations in the plaintiffs' complaint,
16 damages were alleged. Now this is a 12(b) (6) motion.
17 Normally, not a place to argue or prove damages. We didn't
18 really have to show that they can exist, that there are some
19 allegations of damages that can be proven.

20 And we've got several types of damages. We've got our
21 attorney's fees for having to come in here and force First
22 Federal to take real responsibility, not just the, "We've done
23 something wrong and we're sorry for it. Now please let us go"
24 type of responsibility that they're talking about, but the kind
25 that actually pays for the debtor's damages in this case.

1 In this case, the debtor has had to incur credit
2 monitoring expenses. They've had to go out and, and sign up
3 for programs to monitor their account for, for identity theft
4 detection and prevention. That's gonna occur, Your Honor, to
5 the best of my knowledge, for the rest of their natural lives.
6 We still have to come to a decision about how long a period of
7 time is appropriate for that measure of damages, but there are
8 definitely damages they have incurred, have already out-of-
9 pocket expended and are gonna continue to expend during the
10 life of this case and beyond. So we can prove those damages.

11 Also, there are my attorney's fees. Mr. Jones seems
12 to think that the settlement of the motion for relief from
13 stay, which was a completely different case and which, by the
14 way, this settlement order was signed about -- let's see --
15 4/9/2008. That's about three weeks after the adversary was
16 filed. It doesn't say anything in this motion for relief from
17 stay settlement order about the dismissal or withdrawal of the
18 adversary, or about them paying for all the damages in the
19 adversary. The only thing they agreed to pay was the, the fees
20 for the motion to disable public access. And they didn't even
21 pay those to the debtors. They paid those directly to the
22 Chapter 13 estate.

23 Our claim for attorney's fees, I mean the, the order
24 says each side to bear their own costs. That's real easy for
25 Mr. Jones. He sends First Federal a bill and gets paid. I

1 have to file a claim with this Court and fight Mr. Stephenson
2 and probably the biggest fee award that's ever been granted in
3 a contested attorney fee case in this state, the Landmark case,
4 in my opinion, that Your Honor issued previously, that's what
5 it takes for me to get paid, Your Honor. Not only do I have to
6 win and do the work to win, I've got to work to get paid.

7 So this was, this was what it took for me to get paid
8 and I certainly -- my debtors certainly haven't gotten paid for
9 any of their damages and we, we didn't withdraw any of them in
10 this settlement order. For him to allege otherwise is just
11 ridiculous because he could have clearly said, "Well, we're
12 dismissing the adversary." He doesn't say that. Says he's
13 settling the motion for relief from stay and the adversary was
14 in existence.

15 So for him to claim otherwise is just -- well, Your
16 Honor can see it's a stretch, but a couple of things he said.
17 I'm gonna pop through them.

18 He talked about the fact that these, that this
19 original disclosure was still in the records of Horry County.
20 Your Honor, we believe that's, that's the case, too, and what
21 really, really concerns me is he said they were willing to do
22 anything they could. They took responsibility. Well, why is
23 it still unredacted in the public records of Horry County if
24 First Federal has done everything it can? Why haven't they
25 taken the steps necessary to re-record that mortgage?

1 As Your Honor knows from basic real estate law in this
2 state, once a mortgage is recorded it doesn't go to the
3 debtors. It goes to the mortgage company. They're in
4 possession of the original mortgage. Why haven't they redacted
5 and re-recorded that and had it removed from the records, if
6 they've done everything they could? Frankly, by his own
7 admission that it's still in the public records shows they
8 haven't.

9 So I don't think they've taken real responsibility,
10 Your Honor.

11 Mr. Jones admits responsibility for filing a motion
12 for relief from stay. I think that was actually done by his
13 assistant, Kristen Nichols Voyer, for whom he has supervisory
14 capacity. And I appreciate his taking responsibility for that,
15 which is why we need discovery.

16 We need to know exactly how many people failed to
17 redact this. We know at least one person at First Federal
18 failed to redact it. Then it got to his office and presumably,
19 some paralegal failed to redact it and then he was supposed to
20 review it before he filed it. So we believe he failed to
21 redact it and we think if you look at that page it jumps out at
22 you. Anybody that actually had reviewed or read that page
23 would see it. The violation is clear.

24 So we do want discovery. We do want to know who was
25 responsible for that and, and how poor this control is over

1 their processes, Your Honor.

2 Let's see. We had -- okay. Oh. He said the response
3 to the motion to dismiss was not timely. I don't believe
4 that's true. Under 9014-5, a response has to be filed within
5 five days of the hearing. It was filed on Saturday. By my
6 math, that's five days ago. I don't understand his argument
7 about it not being timely. We do believe it is timely, but he
8 waived objection to that, anyway.

9 He said it's not a violation of the law to do this.
10 That's totally untrue. Gramm-Leach-Bliley is the law. Just
11 because there may not be a private right of action doesn't mean
12 it doesn't exist as the standard. It doesn't mean that First
13 Federal has known or should have known about that since July 1,
14 2001 -- well, actually, that's the effective date -- should
15 have known about it before then. Should have complied since
16 then.

17 So it is a violation of federal law and even if it
18 weren't, we've got the Rules; we've got the Code. It violates
19 just about every type of regulation that can apply to First
20 Federal in a bankruptcy case.

21 He said the closest thing to this is a 362 action.
22 No, not really. It's a 524 action. Remember, under 524
23 there's also no private right of action, yet the Court all the
24 time enforces the discharge injunction as a violation under its
25 contempt powers and as I've alleged in my complaint, the Court

1 has the authority to do that under two different ways: It's
2 got 105 and there's a contempt power there. There's also the
3 inherent power of the Court to regulate the conduct of
4 litigants that appear before it.

5 And that's existed way before 9037 came along. The
6 Court's always had that authority. In Judge Waites' Asbill
7 line of cases, he, he distinguishes those two and says there
8 are different standards. I don't really understand the
9 difference, you know, in those standards for contempt, but
10 there are two different standards and that existed even before
11 9037, which came in December 1, 2007.

12 So even in 2005 for that violation, the Court has the
13 clear authority to be able to enforce its Rules.

14 It's really funny. Congress goes to all the trouble
15 December 1, 2007 to put 9037 in there and just to make
16 absolutely extra clear that everybody understood the Court
17 could do this and Mr. Jones comes in and says, "You got these
18 Rules, but you can't enforce them." Well, why did Congress go
19 to all the trouble to give us a rule we couldn't enforce, Your
20 Honor? That is a bunch of hooey, to put it in the vernacular.

21 I think they did intend for us to enforce it and I
22 think that's why it's there and I think the Court should and I
23 think if the Court doesn't, you know, people all across this
24 state are gonna be exposed to undue risk of identity theft and
25 fraud and they're gonna have to pay on their own to protect

1 themselves from these kind of violations when creditors don't
2 really take financial responsibility for it.

3 Let's see. Why steal the identity of a 13 debtor?
4 Good reason, Your Honor. A person gets out of 13, they're debt
5 free. And after about two years, as the Court should know,
6 they got a pretty decent credit record. They've disclosed all
7 this personal private financial information to the Court as
8 part of their 13. In addition, a creditor comes along supplies
9 them with the Social Security number, they are a prime target
10 for identity theft. Maybe not today, but five years down the
11 road, ten years down the road.

12 And his argument about it not being a public record.
13 Your Honor, why should we imagine identity theft who's smart
14 enough to figure out how to use this information isn't smart
15 enough to sign up for a free PACER account or agree to pay 8
16 cents a page and download whatever they want anywhere in the
17 world, in India, in Africa where these hacker rings and other
18 places are organized?

19 Your Honor, we hope to eventually get in touch with
20 the FBI and have some testimony about exactly how identity
21 theft occurs to present it to Your Honor so that you can
22 understand the nature of the damages, but it's not limited to
23 the public records of Horry County, which, by the way, are not
24 available online. We can prove that, Your Honor. You have to
25 walk in to Horry County to see that. Somebody in India and

1 Africa can't do that with that violation, but they can when,
2 with, with First Federal's violation in making this publicly
3 available on the Internet.

4 I might also say that regarding that original
5 disclosure the client had no choice. Understand, this is a
6 mortgage document in South Carolina, a standard form, which, if
7 you look under the signature line has a blank for the Social
8 Security number. It's a contract of adhesion. We can prove,
9 we believe, that it was required for them to put that there by
10 First Federal in order to get that loan and then First Federal
11 recorded that in the public record.

12 So, Your Honor, we had no, no ability to change that
13 and, and certainly if there -- if -- if -- and the damages
14 we're complaining of aren't from that date, anyway. They're
15 from the date of this disclosure. We're not asking the Court
16 to reimburse the client for any credit monitoring or theft
17 prevention services from the date of the original disclosure;
18 only from the two -- actually, really, fairly recently. From
19 this second one when the, when the clients started those
20 services and realized this violation had occurred.

21 So we have limited the damages to the size of the
22 crime, to the best we know currently, Your Honor. We don't
23 know how big this violation may be on a statewide basis. Since
24 this is a statewide organization, we want to know.

25 Those are my arguments, Your Honor. I think, really,

1 he's admitted liability. The duty of care is clear. The
2 breach is clear. It's been admitted. The only question,
3 really, is damages and that's not -- this isn't really an
4 appropriate place for it. We can prove those damages. We ask
5 that the Court add a negligence, allow us to amend to add a
6 state law negligence cause of action.

7 If the Court is inclined to hear state law issues
8 since there was more than one violation, since there was
9 repetition and possibly, repetition outside this case, we would
10 ask for permission to add a South Carolina Unfair Trade
11 Practices Act violation. This is related to jurisdiction and I
12 don't know if the Court is inclined to --

13 THE COURT: Do you have facts that indicate that
14 that's appropriate --

15 MR. CANTRELL: I believe that it is.

16 THE COURT: -- that there's been other violations?

17 MR. CANTRELL: They've -- they've admitted there were
18 two, two disclosures, Your Honor. That's repetition and in
19 discovery we hope to find that this was not an isolated
20 incident, but even with just two --

21 THE COURT: Two disclosures in bankruptcy?

22 MR. CANTRELL: Yes, Your Honor, two disclosures in
23 bankruptcy. Remember, there was the proof of claim they filed
24 back in 2005, which contained this, both debtors' full Socials,
25 and the motion for relief from stay they disclosed in 2008.

1 So we have repetition. It's just a question of how
2 much repetition. I think under the prior rulings from the
3 Court that South Carolina Unfair Trade Practices might be
4 available in that situation.

5 So we ask that the Court allow us to amend to add
6 that.

7 In addition, we didn't -- we, we did alleged 9037. We
8 didn't actually state the Code section that supports that Rule.
9 The Code section is 107(c). We want to -- the allegation's
10 the same, but that's the underlying Code section. We want to
11 add 107(c) and we want to -- although we indicated a violation
12 of the Local Rules, we didn't name the Rule. That's 9029-1.
13 We would like to clear that up.

14 We would also like to add to our prayer for relief a
15 request that the Court order First Federal to do what's
16 necessary to redact the public records of Horry County, which
17 is totally within their control right now, having the original
18 mortgage. So --

19 THE COURT: You got -- is there some law that requires
20 them to do that?

21 MR. CANTRELL: Just you, Your Honor. If -- and, and
22 their admission they want to do everything they possibly can.
23 They've already admitted they want to, so I see no reason why
24 they should have a problem with the Court ordering that. I
25 don't think there's any state law requiring it, but it would

1 certainly help to limit any other damages the client might
2 suffer from the required disclosures in their mortgage form
3 back in 1992.

4 THE COURT: Anything further?

5 MR. JONES: Just briefly, Your Honor.

6 The Fourth Circuit case that Mr. Cantrell cited, he
7 cited to the language regarding an unscrupulous individual. I
8 certainly hope there aren't any of those that have licenses and
9 have the right to, to do certain things on the PACER system and
10 I certainly think that you have to fill out an application and
11 you have to pass training and I'm not sure that it's as big a
12 problem as he thinks that it is.

13 But again, he's right. The damages issue really isn't
14 before you unless you're, you're going to consider, you know,
15 our way of resolving this, fashioning a remedy that fits the,
16 the mistake.

17 I used a phrase -- and I want to make sure that, I
18 thought it was understood, but I want to make sure it is -- I
19 used "punishment to fit the crime." That was a metaphor.
20 There's certainly no crime here. There's no crime alleged.

21 I also never said it wasn't a violation of the law. I
22 said it was a violation of the Rules. It wasn't as if we
23 committed something. We omitted something. And it seems to me
24 that an omission is much more forgivable and, and is not nearly
25 as severe, and the thing that we keep forgetting here and it's

1 the point about the public record in Horry County.

2 And first, let me say that if there's a way to do that
3 I'll advise First Federal to do that. I'm not aware of one,
4 but I tell you what. When I leave, I'll be looking for a way
5 to do that, but the, the issue of damages and the only way it's
6 relevant here today is that the how will you ever prove that
7 any identity theft here or in the future, or all this damages
8 that have come about as a, you know, to, to safeguard against
9 identity theft weren't the result of something much more
10 public. That's the point of that, not that we didn't do
11 anything wrong by doing it. I've never said that.

12 What I've said is it's already there. How do you
13 point, how do you know where that came from? Certainly, I hope
14 he's not suggesting that Ms., Ms. Voyer and myself and my
15 paralegal are gonna do that, or the mail clerk that stuffed the
16 envelope, if that happened to be the case, is gonna do that.

17 It just seems to me that there are certain things for
18 which the Court does have the authority and the obligation to
19 protect, but to, to do it in the harshest way, in a way that's
20 gonna cost both sides fees and costs is overkill for what
21 actually happened here. And all I'm suggesting is the Court
22 has a way to fashion a remedy to do that.

23 Now we think that we've already done what we should
24 have done, but we stand before you here, again, contrite and
25 apologetic, saying, "Tell me what it is that we need to do and

1 we'll be willing to do it."

2 If we have to go through an adversary proceeding for
3 this, we're gonna need to protect all of this. We're going to
4 have to do depositions, as well. We don't think it needs to go
5 there. The message that'll get sent to the rest of the bar,
6 which Mr. Cantrell is worried about, is gonna be loud and clear
7 from the order that resolves this case, which we're freely
8 saying we're willing to do. It's just not, it seems to me, not
9 worthwhile for this Court to have this case and the hundreds of
10 others that could follow over a small mistake.

11 Anybody can make a mistake. The clerk's office, for
12 all I know, has made mistakes and not redacted information.
13 Are we now gonna be able to look through and find every single
14 thing and try to find out who was the culprit for it and then
15 have an adversary proceeding about it? It seems to me the
16 floodgates are gonna open over something that's much smaller
17 and the Court can fashion a remedy for that's much less severe.

18 That's my point, Your Honor.

19 Thank you.

20 THE COURT: Okay. Well, I look at --I just have
21 several comments. I looked at 9037 and it tells me what I can
22 do if there's a violation and it says, "Require redaction or
23 limit or prohibit a party's access," and it doesn't go farther
24 than that.

25 So I'm not sure how far you're getting on 9037 as far

1 as a private right of any sort. He may very well, by settling
2 the other matters with you and agreeing to pay your attorney's
3 fees for redacting the, the, for the motion to redact and
4 fixing the problem so quickly, he may very well have eliminated
5 your damages as a matter of fact, not as a matter of law or
6 anything like that.

7 And, you know, I do want to commend you, first of all,
8 for acting quickly and asking to redact it. I think we
9 responded very quickly.

10 How many days was this on the public record?

11 MR. CANTRELL: Your Honor, I don't know, but you, you
12 acted the same day, basically. I filed it like Saturday or
13 Sunday and you acted --

14 THE COURT: Uh-huh. (Indicating an affirmative
15 response)

16 MR. CANTRELL: -- Monday, first thing.

17 So I know the Court did. I, I don't know how -- well,
18 once it's disclosed, Your Honor, we believe it's out, the cat's
19 out of the bag and we --

20 THE COURT: Well, that's something you would have to
21 prove.

22 MR. CANTRELL: Yes, Your Honor. We can.

23 THE COURT: You'd have to prove --

24 MR. CANTRELL: We believe we can.

25 THE COURT: -- beyond that it's actually there for

1 anyone to get or someone that's of an unscrupulous, an
2 unscrupulous individual to get.

3 I think -- I think you're gonna squeak by on damages
4 when you talk about things like they're preventing future
5 damage by this being out there, but that's bad news for you.
6 But on the other hand -- and also, with 105, I mean, I think,
7 certainly, anything to enforce the Court's orders.

8 Right now, this particular case, I think they've acted
9 very well. I don't think there's anything that I've heard in
10 this particular case that is gonna sway me to use 105 powers.
11 I mean, you gotta show a big mess-up. That's not just a oops
12 kind of thing, but he may have the right to do discovery to
13 find out if it's a bigger problem with that in trying to make
14 his point, which, when you referred to things going on in North
15 Carolina back in the late eighties and early nineties, you
16 know, somewhere there's a balance. At that time a lot of those
17 cases, those creditors deserved it because they were completely
18 -- we'd come to a culture where they were ignoring orders and
19 after that, they stopped ignoring orders.

20 Then it slowed down and everybody just sort of got
21 along. You know, I'd rather live in the environment where we
22 get along and people pick their battles carefully and whatever.
23 Is this the case where somebody deserves it? You know, I don't
24 know that, yet. I'm going -- and you're talking about amending
25 your pleadings for various things. I'm ignoring that.

1 Talking about anything outside the pleadings not, not
2 relevant, or anything outside the record of this case, as it is
3 right now, the complaint as is, I think he's got the right to
4 do some, to prove his damages. Now on summary judgment he may
5 lose that with no damages or no, no causation between the two.
6 And I hate -- I would hate to, to continue with the pain and
7 suffering that will be between now and that motion if it ends
8 up being nothing.

9 So the other comments I wanted to make is that just
10 'cause you have attorney's fees doesn't mean that he's got to
11 pay them. If, if you end up having damages that -- and I don't
12 have any finding this is an egregious case, or I need to make a
13 point, or any of that sort of thing, anything that, than under
14 105 would motivate me or any other law, and you end up with
15 damages for protecting their credit of like \$500 -- I mean, I
16 don't know how much it's gonna cost -- or something very small,
17 that's not something that, that necessarily is gonna lead to
18 the attorney's fees that justify getting to that result, you
19 know.

20 I, I want people not to do this, certainly. The whole
21 Court does. We're reacting very quickly. If we notice
22 something, we're doing it. I do think it's a Rule that
23 absolutely should be followed, strict applicability, got to do
24 it kind of thing.

25 And if somebody has damages as a result, that will not

1 be a good thing for them, for, for the other side, but you
2 gotta have some, I think, some damages, or some other
3 motivation that, something else that motivates the Court to say
4 you really ought to be, you know, whacked for this.

5 And that's what -- I, I know that's what he's gonna be
6 looking for and he may find it; he may not. I have no idea.
7 The, the particular facts of, of, pled here don't seem, you
8 know, that egregious. It seems like a whoops, and let's fix
9 it.

10 And I think that's the way it should be dealt with on
11 a case-by-case basis. If it's a systematic problem, then, you
12 know, the issues will come up of whether or not you've fixed it
13 from here, from the point you're aware of it forward; how many
14 times did it happen; were there, you know, I got to hear that
15 whole thing before I would know the answer to that.

16 But if that's not the case and that's not this case,
17 I'm not sure that attorney's fees are a damage, you know. The
18 damage is only about these people, the, these debtors and, and,
19 you know, and we're talking about their damages.

20 I'm not, I'm not trying to absolutely -- this is very
21 complicated and all the laws we're talking about that don't
22 have proper rights of action and when you get into 105, you
23 think, "Well, I can just do anything." I, I don't believe
24 that. I think I can prevent future harm if there's some kind
25 of systematic problem. I'm not saying that's not so, but you

1 would have to, to prove that.

2 If, if that's not the case -- and we're just talking
3 about these particular debtors -- it seems like the information
4 was out there inappropriately for a very short period of time
5 and it was fixed. And I do believe that if you had contacted
6 Mr. Jones that he would have taken it off right away. I do
7 think that.

8 Now are there other cases out there that are just
9 sitting around same situation? Have they made any effort to
10 find them and fix it? I don't know. Those things might be
11 relevant.

12 But on the 12(b)(6) motion, just on what's on the
13 pleadings, what's here in the pleadings, and what you've argued
14 today that relates to the pleadings, I'm not gonna dismiss the
15 case, but I do want to tell you that from the very beginning
16 when I read the, the complaint and the answer, as I do in my
17 adversaries, I was very skeptical about what are the damages?
18 I certainly know -- I wouldn't want you to put my Social
19 Security number on there for any number of days and you
20 wouldn't want the same thing, but just because it's unsettling
21 doesn't mean there are damages. Your explanation of -- of --
22 they want to go, be extra careful in the future, protected,
23 that's, that's a good answer and that's what's gonna get you by
24 on the personal damages thing. How much is that? I don't
25 know. I, I imagine it's not a huge cost, but over a period of

1 time may be large. But at some point, the risk dissipates.

2 You know, it's not that Social Security numbers are
3 not, Social Security numbers are unavailable from Bankruptcy
4 Court. Your initial 341 notice, I believe, that goes to
5 creditors has the number on there. I'm not sure about that,
6 but I think that's correct.

7 MR. JONES: I believe that it did. I think it now
8 just has the final four.

9 THE COURT: I'm not sure.

10 MR. JONES: But --

11 THE COURT: I don't know about that. I think --
12 that's, that's what I thought, but then someone answered, in
13 the clerk's office, answered a question for me today that made
14 me think, well, maybe it does have the whole thing. I'm not
15 sure.

16 But that's one of the issues is, is, you know, who --
17 I don't even know if, if you can get information that tells you
18 was there anybody that accessed this particular case, you know.

19 I don't know what the NEF did when you filed, you
20 know, the NEF, the notice that goes out electronically. Who
21 did that go to, that sort of thing. I mean, it seems like this
22 is not a mystery. It's something that's pretty easy to figure
23 out within a certain period of time, who got their hands on it,
24 or who had the ability to. I know there are other people that
25 work in offices where the information may have gone that could

1 have gotten it.

2 But still, it's -- the damages in any lawsuit about
3 anything, they can't be so speculative and they have to have a
4 nexus to the wrong, you know. I could go violate the law any
5 second now, but if it doesn't affect you, if there's no effect
6 on you, then there's no, no cause of action. It's between me
7 and whatever appropriate court.

8 So, you know, if you show me something that, that is
9 between the Court and Mr. Jones and his client that they've
10 done something horrible, some type of course of conduct, then
11 so be it. It's -- it exists, but one case, you know, and, and
12 one incident, or even correcting it after they find out about
13 it, that they've been doing something wrong, you know.

14 If you look at those stay cases that were going on,
15 like we said, in, in North Carolina, the defense to that was
16 people came in and said, "We were doing this wrong and here's
17 why it's not gonna happen again. Here's where, how we fixed
18 it," and in, in many of those cases there were very limited
19 damages, or there were no damages at all, depending on the harm
20 to the person. So, you know.

21 MR. JONES: And that was the point that --

22 THE COURT: Right.

23 MR. JONES: -- I was making about it.

24 THE COURT: But -- and -- so I just want to give you
25 my -- in making or not making a federal case out of it and

1 trying to decide that, those are just my comments about the
2 case itself, is this may not be the case with the damages. I
3 don't know. I hope there isn't any case out there with damages
4 'cause there's a person damaged behind that, but maybe it is;
5 maybe it's not. I, I do think he has the opportunity to do
6 some discovery on that.

7 Now having said that, I can imagine hideous amounts of
8 discovery that he could do to your client to try to find out
9 other cases and other things -- and same in, in reverse -- but
10 I'm here if you have any discovery disputes, so. I think --

11 MR. CANTRELL: May we start discovery at this point,
12 Your Honor?

13 THE COURT: Well, you -- we're at the point where I
14 would ask you for a Rule 26 report as to how long you need for
15 discovery and --

16 MR. JONES: And we'll confer and do that, Your Honor.
17 I thought it was premature at the time --

18 THE COURT: I understand.

19 MR. JONES: -- but I think --

20 THE COURT: I understand.

21 MR. JONES: -- it's appropriate now. I agree.

22 THE COURT: Yeah. We waited because we got the
23 motion.

24 But I, I got an open mind and I'm -- I'm -- I'm
25 listening to you and I'm not discounting the case. I'm just

1 saying he's got a really good point on the damages issue, I
2 think, and on the "we're trying to do what we can." And is
3 this the one to make the, a point with? I don't know, you
4 know. I'd have to hear from the plaintiffs as to how they, how
5 this affected them and, you know, I seem to think lately
6 there's been some controversy over emotional distress damages
7 for whether 105 is gonna allow me to do things like that, you
8 know. There's -- there are legal issues involved here, as
9 well. So.

10 MR. CANTRELL: There is a case like that, Your Honor.

11 THE COURT: I think it was something recent. I don't
12 remember.

13 MR. CANTRELL: Judge Waites mentioned it --

14 THE COURT: Yeah.

15 MR. CANTRELL: -- citing the Fourth Circuit.

16 THE COURT: But I do -- and I also note that 9037 just
17 gives me certain options of what I can do and we've already
18 done that, you know. You acted very smartly and quickly to try
19 to at least limit the damages on the front end. And that's the
20 way I hoped it would happen. If there is a mistake made and
21 it's truly a mistake remains to be seen, whether it's truly a
22 mistake or a course, pattern of conduct, that we just fix it
23 and move on and then in the future if there's some damage we,
24 we hear about it.

25 But also understand that I wouldn't want my Social

1 Security number floating around out there, but was it, was it,
2 you know. I don't know. Those questions remain. How, how
3 easy was it to access, who could access it, things of that
4 nature.

5 But I do want to invite you that if you do have issues
6 of discovery, 'cause this could be an extremely broad thing,
7 bring them to me. Let's, let's hear them and, and try to do
8 something reasonable to resolve this case, all right?

9 MR. JONES: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. CANTRELL: Thank you, Your Honor.

12 THE COURT: I'm just gonna issue a short order on that
13 point just saying that you didn't get past the, I think, the
14 12(b) (6) standard.

15 MR. JONES: And, and would Your Honor then issue the
16 Rule 26 notice or --

17 THE COURT: Usually, it's --

18 MR. JONES: -- or not?

19 THE COURT: -- just an order that says confer --

20 MR. JONES: Yeah.

21 THE COURT: -- and let me know how long you need --

22 MR. JONES: Yeah.

23 THE COURT: -- for discovery. So I'll --

24 MR. JONES: I was just wanting to make sure it was
25 coming from you so I'd know --

1 THE COURT: Right.

2 MR. JONES: -- when, when the time started, but --

3 THE COURT: I'll incorporate it into that order --

4 MR. JONES: Okay.

5 THE COURT: -- and it'll give a timeframe for doing
6 that.

7 MR. JONES: All right. That'd be fine.

8 MR. CANTRELL: My amended complaint, Your Honor, will
9 they consent to allow me to add those points, or do I need to
10 file a formal motion to amend?

11 THE COURT: I don't know. That's between the two of
12 you.

13 MR. CANTRELL: Okay. Very well.

14 THE COURT: If you file one, you -- it's -- and, you
15 know, he's consented to it, that's fine; otherwise, you file a
16 motion and we'll have a hearing on that if there's any
17 objection.

18 MR. CANTRELL: Does Your Honor have a problem with
19 related-to state court causes of action in this case, which
20 Your Honor might choose not to address? I don't want to impose
21 upon the Court --

22 THE COURT: Yeah.

23 MR. CANTRELL: -- a state court cause of action Your
24 Honor does not wish to hear.

25 THE COURT: I see them all the time and some of them

1 get sent back and some of them don't. And -- and I -- it just
2 would depend on where the case is going, you know. I don't
3 know. It may get -- it may land you back in state court on all
4 issues -- I have no idea -- or in Federal Court.

5 MR. CANTRELL: Very well.

6 THE COURT: So. But I, I don't know. Until I see the
7 complaint and we have a hearing, I, I can't answer that
8 question for you.

9 MR. CANTRELL: Very well.

10 THE COURT: Okay.

11 MR. CANTRELL: Thank you, Your Honor.

12 THE COURT: I don't have a problem with it personally,
13 I guess is the answer to your question.

14 MR. CANTRELL: I just wanted to make sure. Judge
15 Waites said now that they had more Judges, they were hearing
16 some state law cases when in the past they might not have. So
17 I just wanted to make sure.

18 THE COURT: All I'd say is when appropriate we'll do
19 it, but each case is different.

20 MR. CANTRELL: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. JONES: Thank you, Your Honor.

23 THE COURT: You can go off the record.

24 (Proceedings concluded at 12:16 p.m.)

25

1

CERTIFICATE

2

I, court approved transcriber, certify that the
foregoing is a correct transcript from the official electronic
sound recording of the proceedings in the above-entitled
matter.

5

6 /s/ Janice Russell

August 21, 2008

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Janice Russell, Transcriber

Date

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